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FLETCHER & FOGDERUDE, INC.
A Professional Corporation
5412 North Palm Avenue, Suite 101
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Attorney for Defendant, DANIEL BOOBAR

FILED

JAN 18 2006

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL BOOBAR,

Defendants.

CASE NO. CR-F-02-5301 OWW

MOTION EXHIBITS IN SUPPORT OF
MOTION TO DISMISS OR ALTERNATE
MOTION FOR NEW TRIAL

Date: February 6, 2006

Time: 1:30 p.m.

Judge: Honorable Oliver W. Wanger

The defendant, DANIEL BOOBAR, submits the following exhibits in support of the
Motion To Dismiss or Alternate Motion for New Trial.

1. Informal discovery request letter dated November 25, 2003.
2. Informal discovery request letter dated March 24, 2004, (without attachments).
3. Government letter to Boobar defense counsel dated April 12, 2004, confirming a witness interview on April 9, 2004, (without attachments).
4. Informal discovery request letter dated April 21, 2004.
5. Revised proposed order regarding discovery sanction.
6. Informal discovery request letter dated May 18, 2005.
7. Informal discovery request letter dated October 5, 2005.
8. Informal discovery request letter dated December 15, 2005.
9. Government letter dated December 27, 2005, in response to informal discovery request.

1/12/06
Boobar
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10. Transcript of taped interview of Michael Harland on March 12, 2002, which cassette tape was provided as discovery by United States of America on October 24, 2005.
11. Informal discovery request letter dated January 5, 2006, with attached detailed list of all post conviction discovery provided by the government.

DATED: January 11 , 2006

Respectfully submitted,

/s/ Eric K. Fogderude
ERIC K. FOGDERUDE
Attorney for Defendant,
DANIEL BOOBAR

EXHIBIT 1

Fletcher & Fogderude, Inc.

NORMAN L. FLETCHER
ERIC K. FOGDERUDE

ATTORNEYS AT LAW
5412 NORTH PALM AVENUE
SUITE 101
FRESNO, CALIFORNIA 93704

TELEPHONE (559) 431-9710
FAX (559) 431-4108

November 25, 2003

VIA FACSIMILE: 559-498-7432

Jonathan B. Conklin
Assistant US Attorney
1130 Q Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW

Dear Mr. Conklin:

This letter will serve to confirm our conversation at Clovis Police Department on October 31, 2003, during the meeting with C.P. Officer Mike Cassida. It was my understanding that I would be provided the following listed items, subject to your ability to obtain the items, within two weeks of our visit, to wit:

1. Flow Chart of defendants contacts with other co-defendants.
2. Copy of Subpoena and records received from Boobar's service providers ie. internet, telephone, etc.
3. Response to factual statements attributed to C.P. Officer Mike Cassida referenced to in Texas Affidavit for Search Warrant.
4. Inspect and/or analyze all items seized from Boobar residence, including computer.
5. Inspect and/or analyze computer and items seized from Harlan.
6. Texas reports related to interview with Boobar and execution of search warrant.

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ATTORNEYS AT LAW

Mr. Conklin
November 25, 2003
Page 2

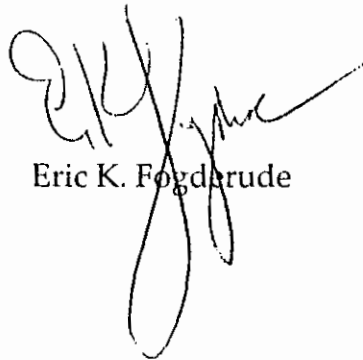
7. Florida reports related to interview with Harlan and execution of search warrant.
8. Copy of the photos attributed to Boobar which you showed me in court and at our meeting.

As I mentioned when agreeing to the April trial date, I will only be prepared to try Mr. Boobar's case if I receive the above-referenced discovery in a timely fashion.

Thank you, as always, for the courtesy and cooperation you have shown me.

Very truly yours,

FLETCHER & FOGDERUDE, INC.



Eric K. Fogderude

EKF/ms

EXHIBIT 2

Fletcher & Fogderude, Inc.

NORMAN L. FLETCHER
ERIC K. FOGDERUDE

ATTORNEYS AT LAW
5412 NORTH PALM AVENUE
SUITE 101
FRESNO, CALIFORNIA 93704

TELEPHONE (559) 431-9710
FAX (559) 431-4108

March 24, 2004

VIA FACSIMILE: 559-498-7432

Jonathan B. Conklin
Assistant US Attorney
1130 O Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW

Dear Mr. Conklin:

Thank you for suggesting that I send an informal written request setting forth those items of discovery which I am still seeking.

I need a copy of any search warrant, affidavit, return on warrant and investigative reports concerning the execution of any warrants for Boobar, Emmerson, and/or Harlan's property, as well as any other co-defendant. I enclose a copy of the return and search warrant I have obtained for Boobar. I previously provided you a copy of the search warrant affidavit. You previously provided me with a 13 page report from Harris County with attached Sheriff Property Room forms, dated January 23, 2004. If there are other documents related to the Boobar seizure, investigation and arrest, including from the Houston Customs Office, I am requesting them. I have no reports, warrants, etc. related to the Emmerson and Harlan seizures and searches.

Your office has provided me with a copy of the Boobar computer ie. item "11" on the return and inventory. I need a copy of the remaining items ie. 1-10, 12-17, as soon as possible, so that I may have them examined by my office and my retained expert.

I also need a copy of any government obtained records of my client and/or Loltot, whether obtained by warrant, summons or subpoena, including a copy of the

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ATTORNEYS AT LAW

Mr. Conklin
March 24, 2004
Page 2

warrant, summons or subpoena. To date, the only government obtained records of my client that I have received are those provided as Govt. Exhibit DB-7 ie. IP Records and DB-12 Yahoo Profile. There was no summons, subpoena or search warrant provided for DB-7 or DB-12. I am aware that a subpoena to testify and/or produce records was issued for Mrs. Boobars records October 23, 2002. A review of the affidavit for the Boobar warrant infers that CPD Cassida had obtained/reviewed IP records prior to the issuance of that warrant. I am requesting those types of records.

As mentioned before, I may be filing a motion to suppress all such records, subject to your right to object and challenge standing.


I would like a copy of the flow chart shown to me in court and which was shown to the media during a recent press release by the government. I also need the Jenck's discovery and 404 (b) discovery. I believe it was due 30 days before trial.

I wish to know if the government possesses knowledge of whether any of the defendant's computers were hacked into by government agents and/or private parties such as Save the Children which has been referred to in press releases and at a recent seminar conducted by government investigator involved in this case. I also need to know if such parties obtained personal information and/or records of my client or co-defendants, and if so how they obtained it and whether it was shared with the government.

Last, I wish to meet with you, this week if possible to discuss any possible resolution of this case.

Thank you as always for the courtesy you have shown me.

Very truly yours,
FLETCHER & FOGDERUDE, INC.


Eric K. Fogderude

EKF/ms
Enclosures

EXHIBIT 3



United States Attorney
Eastern District of California

Federal Building, Room 3654
United States Courthouse
1130 O Street
Fresno, California 93721

559/498-7272
Fax 559/498-7432

April 12, 2004

Eric Fogderude
Attorney at Law

RE: Supplemental Government's Trial Exhibits

Dear Mr. Fogderude:

As we discussed in our telephone call of this morning, the government continues to prepare for trial in the matter U.S. v. Boobar. You have previously been provided a set of government trial exhibits. You have also been provided a full set of discovery consisting of photographs obtained from computers belonging to numerous defendants, including defendant Emmerson.

During a witness interview that occurred on Friday April 9, 2004, certain photographs were shown to a witness who stated that he sent such photographs to your client, Daniel Boobar. Attached please find a CD containing those photographs, as well as others. Once again, you are reminded that these photographs have previously been provided in discovery. They are being provided once again and designated as potential government exhibits for trial.

In order to assist your preparation, the government specifies the following photographs as potential exhibits, though the government reserves its right to introduce all photos should they also become relevant.

ffpao10042.jpg through ffpao10053.jpg

p9090208.jpg through p9090215.jpg

EXHIBIT 4

Fletcher & Fogderude, Inc.

NORMAN L. FLETCHER
ERIC K. FOGDERUDE

ATTORNEYS AT LAW
5412 NORTH PALM AVENUE
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TELEPHONE (559) 431-9710
FAX (559) 431-4108

April 21, 2004

VIA FACSIMILE: 559-498-7432 ✓

Jonathan B. Conklin
Assistant US Attorney
1130 O Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW

Dear Mr. Conklin:

Yesterday, I overheard Detective Casida had testified during the Paul Whitmore court trial that he testified under oath in other jurisdictions including Indiana concerning his investigation in this case. I did receive a copy of the preliminary hearing transcript in the Whitmore-Rowland case in San Diego only.

Therefore, I am requesting a copy of any other preliminary hearing transcripts and any written reports he has authored reflecting his investigation in this case.

I am requesting similar transcripts and written reports for any other government witnesses on the government's witness list.

Second, it is my belief Emmerson and Harland have been interviewed on numerous occasions by the government or its agents in California and Florida but to date I have seen no reports concerning those interviews. Those interviews clearly fall within the Jenck's Act. Mr. Harland has refused an interview with the defense and therefore I have no written discovery to reflect what statements he has made in the past to law enforcement. I have to believe such reports exist and again are discoverable.

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ATTORNEYS AT LAW

Mr. Conklin
April 21, 2004
Page 2

Last, Roger Litman advised me that he returned to you computer disks which contain the government's trial exhibits for all defendants. I am requesting a copy of those as well.

Thank you for your continued cooperation regarding these discovery issues.

Very truly yours,

FLETCHER & FOGDERUDE, INC.

**Dictated but not read
To Avoid Delay**

Eric K. Fogderude

EKF/ms

EXHIBIT 5

[PROPOSED] ORDER

IT IS HEREBY ORDERED THAT, defendant Boobar's motion for discovery sanctions is granted in part as follows:

The government is restricted from introducing evidence obtained directly from the computer and related equipment seized from the residence of Daniel Boobar on or about August 28, 2002. The government may request to introduce such evidence, however, if made relevant by the defense during cross-examination or the presentation of its case-in-chief. The court instructs the government to notify the court and counsel prior to moving to admit such evidence.

EXHIBIT 6

May 18, 2005

VIA FACSIMILE: 559-498-7432

Jonathan B. Conklin
Assistant US Attorney
1130 O Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW
Request for Sentencing Discovery

Dear Mr. Conklin:

This letter will serve to confirm that on April 21, 2005, your office provided me with computer generated Reports of Investigation from the Department of Homeland Security i.e. U.S. Customs, in response to the subpoena and discovery order issued by the Honorable Oliver Wanger on January 4, 2005.

Those reports were identified by a common case number 07 QL 02 BB 0004 and were numbered as follows:

WP (i.e. West Palm Beach) 07 QL 02 BB0004, Report Numbers 1-10, inclusive, with dates April 2, 2002 - November 1, 2002.

FC (i.e. Fresno County) 07 QL 02 BB0004, Report Number 2 and 4 with dates of March 7, 2002 - August 9, 2002.

As one can discern from the number sequence, the reports provided represent part, but not all of the reports generated by the U.S. Customs Fresno Office. I am

Mr. Conklin
May 18, 2005
Page 2

therefore requesting a complete copy of all of the Fresno Office reports.

The reports also refer to related cases and case numbers prepared by other offices, which case numbers are listed as follows:

P9C15917800CFS, FC07QL02BB0004, SD07QL02BB0004, BB07QL02BB0004, HO070SOZH00023, BB02QL02BB0004, DA07QL02BB0004, JX07QL02BB0004, KC07QR00KC0006, WP07QL02BB0004001, P9C15914800CWP, BB07QL02BB0004, WP07QS02WP0006, SD07QR02SD0003, DQ07QL02BB0004, VN07QR00KC0006, PT07QL02BB0004

I am requesting a complete copy of all reports generated under the above listed related report numbers.

Report number 001 in case number WP07QL02BB0004 states that defendant Emmerson's attorney supplied the "RA/Fresno" with information identifying several individuals who were producers of child pornography. That list included the addresses and telephone numbers of suspected child abusers. Please provide my office with that list.

That report also states that a package containing photographs, information and a CD-ROM related to Michael David Harland and his participation in the production and distribution of child pornography, was forwarded by Clovis Police Corporal James Gentry to the U.S. Customs office in West Palm Beach, Florida on March 11, 2002. Please provide my office with a duplicate copy of that package.

That report also states that U.S. Customs and FBI agents were present on March 11, 2002, when Defendant Harland was arrested and gave a confession in which he included the names of those individuals he distributed/shared child porn pictures with over the internet. I am requesting a copy of any recording, transcript, handwritten notes made of that interview.

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Mr. Conklin
May 18, 2005
Page 3

Report number 003 from the West Palm Beach office states that a named individual was being investigated by the San Diego office as one of the persons defendant Harland distributed child porn of Emma with via the internet. I am requesting the investigative file related to that individual named in the report who resides in Illinois.

Report number 7 from the West Palm Beach office states that a computer forensic report consisting of at least 58 pages, was made on defendant Harlands Morningstar Nursury Computer. Please provide me with a copy of any/all computer forensic reports made of any Harland computer related equipment/evidence seized. I am also requesting a copy of any and all photographs retrieved from the Harland computer depicting Harland and his daughter in a lewd and/or lascivious pose.

The reports provided establish that the FBI was present at the arrest of Harland on March 11, 2002, and throughout the Harland investigation and Florida prosecution. My office has been advised by Martin Ruiz De Gamboa, Special Agent F.B.I., Florida, that the F.B.I. had generated no reports concerning its investigation or which were responsive to the subpoena and discovery order of January 4, 2005. I am requesting a copy of all F.B.I. reports, handwritten notes, interview tapes, etc. related to their investigation.

Last, my investigation has located an inmate who was housed with defendant Harland in the Fresno County Jail. This inmate stated that defendant Harland represented that he was cooperating and providing information to the U.S. Government which would assist Mr. Harland in being sent back to England to serve his time. I am requesting discovery of any discussions held with defendant Harland and/or his attorney by any government employee during which the subject matter of whether defendant Harland's sentence could be served in England.

I believe that the above-referenced materials are discoverable pursuant to numerous pre-trial and post-trial discovery orders, as well as Giglio and/or Brady material.

Mr. Conklin
May 18, 2005
Page 4

I am requesting this material be produced as soon as possible, but no later than May 25, 2005, as the material is needed to prepare appropriate motions and/or sentencing memorandum.

Thank you for your anticipated prompt response.

Very truly yours,

FLETCHER & FOGDERUDE, INC.

Eric K. Fogderude

EKF/ms

EXHIBIT 7

October 5, 2005

VIA FACSIMILE: 559-498-7432

Jonathan B. Conklin
Assistant US Attorney
1130 O Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW

Dear Mr. Conklin:

I wish to thank you for providing the extensive discovery related to additional U.S. Customs reports which I picked up from your office on Tuesday, October 4, 2005.

In reviewing the materials provided, I noticed that I still have not received a copy of the list received from Mr. Emmerson's attorney which set forth the individuals who were the producers of child pornography and I did not receive a copy of the cd-rom package containing photographs and information relating to Mr. Emmerson's relationship with Michael David Harland which information was forwarded by Clovis Police Department to West Palm Beach on March 11, 2002. The last item that I requested was a copy of the duplicate tape of the interview of Mr. Harland when he was arrested on March 11, 2002. I enclose with this letter a copy of my May 18, 2005, letter which provided references on page two of the remaining items of discovery that I have not yet been provided. Can you please advise me when those items will be available for pick up.

Thank you for your anticipated prompt response.

Very truly yours,
FLETCHER & FOGDERUDE, INC.

Eric K. Fogderude

EKF/ms
Enclosures

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EXHIBIT 8

Fletcher & Fogderude, Inc.

NORMAN L. FLETCHER
ERIC K. FOGDERUDE

ATTORNEYS AT LAW
5412 NORTH PALM AVENUE
SUITE 101
FRESNO, CALIFORNIA 93704

TELEPHONE (559) 431-9710
FAX (559) 431-4108

December 15, 2005

VIA FACSIMILE: 559-498-7432

Jonathan B. Conklin
David Gappa
US Attorney's Office
1130 O Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW
Sentencing Date: February 6, 2006

Dear Mr. Conklin and Mr. Gappa:

This letter will serve to confirm that the sentencing hearing has been scheduled for February 6, 2006.

I am now in the process of preparing the post-conviction motions and sentencing brief on behalf of Mr. Boobar. In reviewing the post-conviction discovery provided to date by the government, I realized that there were no cover letters attached to the discovery provided, itemizing what was provided and when it was provided.

In order to provide an accurate record of the discovery, I have prepared an Exhibit setting forth an itemization of the discovery which consisted twelve U.S. Customs reports provided on April 21, 2005, one hundred twenty two (122) U.S. Customs reports provided on October 24, 2005, an audio tape of Harland interview of March 12, 2002, provided on October 24, 2005, and a CD disc provided on November 2, 2005. Would you please provide written confirmation whether my itemization is complete and accurate?

As you can see from the exhibit, I have provided a summary of the files and/or sub files which were contained on the CD disc and I have provided a copy of a transcript my office has prepared of the Harland interview of March 12, 2002.

Fletcher & Fogderude, Inc.
ATTORNEYS AT LAW

Mr. Conklin
Mr. Gappa
December 15, 2005
Page 2

I still have not received the list provided by Mr. Emmerson's attorney to "RA/Fresno" which contained information identifying individuals who were involved in child pornography with Mr. Emmerson and I have not received the "photographs and information" related to Michael Harland and his participation in the production and distribution of child pornography which was forwarded with a CD disc by Clovis P.D. Gentry to U.S. Customs Florida on March 11, 2002. These items were referred to in U.S. Customs report WP07QL02BB004 report 001 and were requested in my prior letter of May 28, 2005. I assume that the CD disc provided on November 2, 2005 is in fact a duplicate of the above referenced disc. Would you also please confirm that?

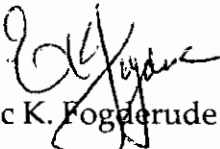
Last, after reviewing the U.S. Customs reports provided, it is apparent that Emmerson was interviewed by law enforcement on three separate dates, to wit: June 2003, July 29, 2003 and March 2004. (See U.S. Customs Reports FC07QL02BB0004 reports 020, line 7 and report 014, page 3 and SD07QR025D003, report 010, page 3).

I am specifically requesting a copy of all written reports, tape recordings, hand written notes and a list of any witnesses to these interviews. In the event that tapes and/or reports of any of these interviews were destroyed, as suggested by Officer Casida at trial, I am also requesting the names of any persons who have knowledge of that destruction.

It is my client's intention and desire not to seek any further continuances of his sentencing hearing, and therefore time is of the essence. Please let me know if there will be any problem with providing the remaining discovery items in the next week or so.

Should you have any questions concerning this letter, please do not hesitate to call.

Very truly yours,
FLETCHER & FOGDERUDE, INC.


Eric K. Fogderude

EKF/ms
Enclosures

Fletcher & Fogderude, Inc.
ATTORNEYS AT LAW

DISCOVERY ITEMIZATION EXHIBIT

U.S. Customs Reports Provided April 21, 2005

<u>Reports Requested</u>	<u>Reports Provided</u>
WP0QL02BB0004	(Reports 1-10)
FC07QL02BB0004	(Reports 2 and 4)

U.S. Customs Reports Provided October 24, 2005

<u>Reports Requested</u>	<u>Reports Provided</u>
P9C15917800CFS	Not Provided
FC07QL02BB0004	(Reports 01-028)(SAR 01-018)
SD07QL02BB0004	(Reports 01-15)
BB07QL02BB0004	(SAR 01,02 Reports 01-010) 2 sets, Case no. different H007QS02H00023
HO070SOZH00023	(SAR 001, Reports 01-05)
BB02QL02BB0004	Not Provided
DA07QL02BB0004	(Reports 01-06) (SAR 001-004)
JX07QL02BB0004	(Reports 01-03) (SAR 001)
KC07QR00KC0006	(Reports 01-08)
WP07QL02BB0004001	(001-009 we already had 10)
P9C15914800CWP	Not Provided
WP07QS02WP0006	(SAR 1-4, report 01)
SD07QR02SD0003	(Reports 1-2 mistaken case #)
DQ07QL02BB0004	No match, not provided

Fletcher & Fogderude, Inc.
ATTORNEYS AT LAW

VN07QR00KC0006

(Reports 01-04)

PT07QL02BB0004

(SAR 001) (Reports 001-002)

Audio Tape Harland Interview of March 12, 2002 Provided October 24, 2005

Audio tape marked FBSO # 02-042280. I enclose a copy of the transcript I have prepared from the Harland interview audio tape for your files.

CD Disc Dated November 2, 2005 Provided November 2, 2005

Mike - MC81		41 pics
Mike - MC 81	(sub file) "Pauls"	56 pics
Mike- MC82		36 pics
Mike- MC82	(sub file) "Travel Folder"	36 pics
Mike - MC94		101 pics
Mike -MC94	(sub file)	21 pics
Emma Folder		68 pics
	(sub file) "Finished-zips"	0 pics
	(sub file) "Incoming"	0 pics
	(sub file) "m-zips"	0 pics
	(sub file) "Myhem01"	45 pics
	(sub file) "zips"	0 pics
	(sub file) "Komo"	0 pics
	(sub file) "m-zips"	0 pics
	(sub file) "new folder"	0 pics
	(sub file) "recent"	27 pics

DISCOVERY ITEMIZATION EXHIBIT

U.S. Customs Reports Provided April 21, 2005

Reports Requested

WP0QL02BB0004

FC07QL02BB0004

Reports Provided

(Reports 1-10)

(Reports 2 and 4)

U.S. Customs Reports Provided October 24, 2005

Reports Requested

FC07QL02BB0004

SD07QL02BB0004

BB07QL02BB0004

HO070SOZH00023

DA07QL02BB0004

JX07QL02BB0004

KC07QR00KC0006

WP07QL02BB0004001

WP07QS02WP0006

SD07QR02SD0003

VN07QR00KC0006

PT07QL02BB0004

Reports Provided

(Reports 01-028)(SAR 01-018)

(Reports 01-15)

(SAR 01,02 Reports 01-010) 2 sets, Case no.
different H007QS02H00023

(SAR 001, Reports 01-05)

(Reports 01-06) (SAR 001-004)

(Reports 01-03) (SAR 001)

(Reports 01-08)

(001-009 we already had 10)

(SAR 1-4, report 01)

(Reports 1-2 mistaken case #)

(Reports 01-04)

(SAR 001) (Reports 001-002)

Audio Tape Harland Interview of March 12, 2002 Provided October 24, 2005

Audio tape marked FBSO # 02-042280. I enclose a copy of the transcript I have prepared from the Harland interview audio tape for your files.

CD Disc Dated November 2, 2005 Provided November 2, 2005

Mike - MC81		41 pics
Mike - MC 81	(sub file) "Pauls"	56 pics
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Mike- MC82	(sub file) "Travel Folder"	36 pics
Mike - MC94		101 pics
Mike -MC94	(sub file)	21 pics
Emma Folder		68 pics
	(sub file) "Finished-zips"	0 pics
	(sub file) "Incoming"	0 pics
	(sub file) "m-zips"	0 pics
	(sub file) "Myhem01"	45 pics
	(sub file) "zips"	0 pics
	(sub file) "Komo"	0 pics
	(sub file) "m-zips"	0 pics
	(sub file) "new folder"	0 pics
	(sub file) "recent"	27 pics

EXHIBIT 9



U.S. Department of Justice

United States Attorney
Eastern District of CaliforniaMcGregor IV, Scott
United States Attorney1130 O Street, Room 3654
Fresno, California 93721559/498-7272
Fax 559/498-7432
TTY 559/498-7499

December 27, 2005

Eric K. Fogderude
Fletcher & Fogderude, Inc.
5412 North Palm Avenue, Suite 101
Fresno, CA 93704

Re: United States v. Boobar, CR-F-02-5301 OWW

Dear Mr. Fogderude:

Jon Conklin forwarded to me your letter dated December 15, 2005. He handled all aspects of this case from the trial until his last day in the office on December 16, 2005.

I have reviewed the listing of items provided to you in discovery after the trial of this case. It accurately reflects the items that were given to you. But as we discussed on the telephone last Friday afternoon, the list might lead to an inaccurate inference that some items exist but were not provided. For clarification, the following items are not reports:

P9C15917800CFS
BB02QL02BB0004
P9C15914800CWP
DQ07QL02BB0004

I am told that Special Agent Mike Prado explained what these entries are, and none of them contain any discoverable information related to your client.

To the extent that a "list provided by Mr. Emmerson's attorney to 'RA/Fresno' which contained information identifying individuals who were involved in child pornography with Mr. Emmerson" ever existed, no law enforcement official is now able to locate it. You have been provided with the CD sent by the Clovis Police Department to the U.S. Customs office in Florida on or about March 11, 2002. It contained visual depictions of Michael Harland molesting his daughter Emma.

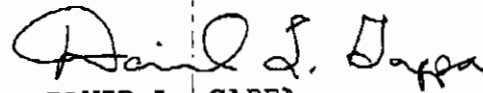
I also have been told that you have received a copy of all records of the interviews of Lloyd Emmerson in June 2003, on July 29, 2003, and in March 2004. I have not been able to learn from Sergeant Casida what he meant if there was a reference to one or more tapes that might have been destroyed. Should he advise me of something responsive to your request, I will promptly forward that information to you.

Given my absence from the office from December 30, 2005, through January 8, 2006, the current response time for motions of two weeks may be inadequate. I may contact you once I receive your filings related to sentencing and/or for a new trial should it look like I need any additional time for a response.

I look forward to being able to have your client sentenced in the very near future.

Sincerely,

McGREGOR W. SCOTT
United States Attorney



DAVID L. GAPPA
Assistant U.S. Attorney

EXHIBIT 10

Eric K. Fogderude, #070860
FLETCHER & FOGDERUDE, INC.
A Professional Corporation
5412 North Palm Avenue, Suite 101
Fresno, California 93704
(559) 431-9710

Attorney for Defendant, DANIEL BOOBAR

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CASE NO. CR-F-02-5301 OWW
Plaintiff,)	
vs.)	
DANIEL BOOBAR,)	
Defendants.)	

TRANSCRIPT OF TAPED INTERVIEW OF MICHAEL HARLAND ON
MARCH 12, 2002, WHICH CASSETTE TAPE WAS PROVIDED AS DISCOVERY BY
UNITED STATES OF AMERICA ON OCTOBER 24, 2005

Transcribed by: Marci Smith
Fletcher & Fogderude, Inc.
5412 N. Palm Ave. # 101
Fresno, CA 93704
Telephone: 559-431-9710

Transcribed on: October 26, 2005

HEBERT: This is Detective Herbert with the Palm Beach County Sheriff's Office speaking to Michael Harland in reference to Case Number 02-042280. Today is the 12th day of March 2002, it is approximately 12:20 a.m. Mr. Harland will you please state your date of birth for me.

HARLAND: Um, November 10, 1959.

HEBERT: And we spoke earlier, correct?

HARLAND: Correct

HEBERT: And you were read your Constitutional warnings at that time

HARLAND: Yes I was

HEBERT: Do you understand all those?

HARLAND: Yes I do

HEBERT: What I would like to talk to you now about is the photographs that were taken between you and your daughter

HARLAND: Okay

HEBERT: Okay, what's your daughter's name?

HARLAND: Emma

HEBERT: Emma, and she's how old?

HARLAND: 6 years old

HEBERT: Just turned 6?

HARLAND: Correct, yes

HEBERT: When?

HARLAND: September

HEBERT: September what?

HARLAND: 13th

HEBERT: September 13th

HARLAND: Yes

HEBERT: Does she live with you?

HARLAND: No, she doesn't

HEBERT: How often do you get to see her?

HARLAND: Once, every two weeks and also alternate Wednesdays

HEBERT: Alternate Wednesdays?

HARLAND: Yes

HEBERT: So, when she comes to stay with you, does she come to stay with you or just ..

HARLAND: She comes to stay on alternate weekends and I go up to see her on alternate Wednesdays

HEBERT: Okay, when she comes to stay with you, what day does she come in on the weekend?

HARLAND: On a Friday

HEBERT: Through when?

HARLAND: Sunday

HEBERT: Friday through Sunday

HARLAND: Yes

HEBERT: Okay, and where does she stay when she's at your house?

HARLAND: She has her own room

HEBERT: Which room is that?

HARLAND: It's the third bedroom, back bedroom

HEBERT: The farthest one?

HARLAND: Well actually yes

HEBERT: From yours

HARLAND: Yes

HEBERT: Okay, those photographs that we were looking at earlier

HARLAND: Yes

HEBERT: Those are of you and your daughter

HARLAND: Some of them are, yes

HEBERT: What are the other ones?

HARLAND: Of her

HEBERT: Just your daughter

HARLAND: Uh, yes

HEBERT: And what were those pictures depicting

HARLAND: Which ones in particular

HEBERT: The ones that we were looking at earlier

HARLAND: They show my daughter and I and also my daughter on her own

HEBERT: Okay, what was your daughter wearing

HARLAND: A variety of outfits and some she wasn't wearing anything

HEBERT: So on some she was naked

HARLAND: Correct, yes

HEBERT: And those pictures that you took of your daughter naked was that planned

HARLAND: Uh, some of them were, yes

HEBERT: Some of them were

HARLAND: Yes

HEBERT: And on the pictures of you and your daughter were you wearing clothes

HARLAND: Uh, I think in one I wasn't

HEBERT: In one you weren't

HARLAND: Correct

HEBERT: Was she wearing clothes in that time

HARLAND: I don't believe so

HEBERT: And in that picture that neither one of you were wearing clothes, what was the picture of?

HARLAND: It was my daughter and I on the bed

HEBERT: On the bed

HARLAND: Yes

HEBERT: Okay, and at that time we could see an organ of yours, correct

HARLAND: Correct

HEBERT: And that would have been your penis

HARLAND: Correct

HEBERT: And where was your penis

HARLAND: Uh it was, it was on her legs

HEBERT: On her legs

HARLAND: Yes

HEBERT: Or on her vagina

HARLAND: It was close to, yes

HEBERT: Was it touching her vagina

HARLAND: It may have been I don't recall

HEBERT: You told me earlier it was

HARLAND: I think it probably was, yes

HEBERT: Okay, and your penis was erect at the time

HARLAND: I think partially, I'm not one hundred percent certain

HEBERT: Did you ever ejaculate in front of your daughter or masturbate on or in front of your daughter

HARLAND: No

HEBERT: Was it sexually stimulating for you to take these pictures

HARLAND: In a way I suppose it was, yes

HEBERT: Did your daughter ever touch your penis

HARLAND: No

HEBERT: Did you ever put your penis inside your daughter

HARLAND: No

HEBERT: Did you ever put it inside her mouth

HARLAND: No

HEBERT: Did you ever put it inside her butt

HARLAND: No

HEBERT: Did you ever put it inside her vagina

HARLAND: No

HEBERT: Did you ever put anything inside those three orifices

HARLAND: No I didn't

HEBERT: Where were all these pictures taken?

HARLAND: In my home

HEBERT: And where is that at?

HARLAND: (Inaudible) ...

HEBERT: Were any of these pictures taken in her house?

HARLAND: No

HEBERT: Any of these pictures taken at anybody else's house?

HARLAND: No

HEBERT: In your home in which parts of the house?

HARLAND: Two, second and third bedroom

HEBERT: And where else?

HARLAND: On the patio area by the pool

HEBERT: And where else?

HARLAND: I think a couple may have been taken on the couch in the living room

HEBERT: Now there were pictures of her taken in the bath tub, was that at your bath tub or somebody else's

HARLAND: No, I'm sorry it was my bath tub

HEBERT: That was your bath tub

HARLAND: Yes

HEBERT: Now there was a little boy in the pictures, that there was nothing they were all clothed

HARLAND: Correct

HEBERT: Who was that little boy

HARLAND: That's my son

HEBERT: Your son, and what's your son's name

HARLAND: Ian

HEBERT: And how old is he

HARLAND: He's 11

HEBERT: Do you know Ian's birthday

HARLAND: August the.... I'm sorry I keep saying ... February 18, 1991

HEBERT: How old did you did you start taking pictures of your daughter

HARLAND: I'm really not one hundred percent certain, it was just a thing that seemed exciting at the time, I really don't know

HEBERT: Was it somebody else's idea, your idea?

HARLAND: Well I'd taken, as you do take photographs of family and it just went I guess one stage too far

HEBERT: Okay, when was the last time you took pictures of your daughter without clothes on?

HARLAND: Probably fall of last year

HEBERT: Fall of ??

HARLAND: 19 .. Uh 2001

HEBERT: 2001?

HARLAND: Yes

HEBERT: So when you say Fall, cause your Fall growing up in England is gonna be different than...we don't have a Fall in Florida.. which would be

HARLAND: August/September

HEBERT: August/September, is she is school now?

HARLAND: Yes she is

HEBERT: What grade is she in?

HARLAND: She's in kindergarten

HEBERT: She's in kindergarten, did she just start in 2001?

HARLAND: Yes

HEBERT: So was this before or after she started kindergarten

HARLAND: Uh, before

HEBERT: Before she started school, okay, how about your son did you ever take any pictures naked of him?

HARLAND: No

✓ HEBERT: Just your daughter

HARLAND: Yes

HEBERT: Did you ever trade these pictures on the internet?

HARLAND: The ones of my daughter, yes

HEBERT: How about you and your daughter

HARLAND: Uh, I did

HEBERT: Okay, do you know who you sent those to?

HARLAND: Man out in California

HEBERT: Okay, do you know his name?

HARLAND: Uh, Lloyd

HEBERT: Lloyd, anybody else?

HARLAND: There was another man called Paul, and I don't know his other name, I'm still trying to think of his screen name, I know I was introduced to him by Lloyd, he was a friend of his

HEBERT: A friend of Lloyd's

HARLAND: Yes

HEBERT: Do you know where Paul's at?

HARLAND: I think he's in California

HEBERT: Did Paul and Lloyd send you pictures?

HARLAND: Yes they did at one time

HEBERT: What kind of pictures did they send you

HARLAND: The same kind

HEBERT: The same, their daughter, someone else's daughter

HARLAND: Of his daughter

HEBERT: His daughter?

HARLAND: Yes

HEBERT: Was she wearing clothes?

HARLAND: Uh originally yes and then he did some, some without

HEBERT: And how old is she

HARLAND: His daughter I think was probably eleven

HEBERT: Eleven

HARLAND: Ten or eleven, I think

HEBERT: And were those pictures with him in them also

HARLAND: I don't recall, I don't ... no....

HEBERT: So it was just the daughter

HARLAND: Yes

HEBERT: Anybody else send you pictures?

HARLAND: No

HEBERT: You had mentioned earlier that you were viewing pictures on the internet recently of girls

HARLAND: Yes

HEBERT: What were the ages of those girls

HARLAND: They were probably like teens

HEBERT: Teens, early teens?

HARLAND: No, on, it was probably some early teens, but they were all fully clothed

HEBERT: All fully clothed

HARLAND: Yes

HEBERT: Have you been looking at any other naked pictures lately

HARLAND: I've seen some adult ones, that's about it I think

HEBERT: Have you ever shown Emma any videos or pictures of naked people

HARLAND: No

HEBERT: Has she seen any naked pictures on the internet

HARLAND: No

HEBERT: Has she ever been in the room while you were looking at pictures on the internet

HARLAND: Not while I was looking, no

HEBERT: How did, what was she doing when you put your penis on her vagina to take the picture

HARLAND: She was playing with remote controls and,...

HEBERT: What um... how did you usually take the pictures, where was the camera set up

HARLAND: It was on the desk.. and if it was her room it was a fold down desk that was there

HEBERT: Is that the same desk that's in there now

HARLAND: Yes

HEBERT: Okay, different bedspread is in there now though

HARLAND: Yeah

HEBERT: What happened to the bedspread that was in there

HARLAND: Inaudible... We may still have it I'm not sure.. that's my wife's department

HEBERT: And there is a couch. She's the redecorator

HARLAND: Yes

HEBERT: There was a couch that was in that one picture

HARLAND: Yes

HEBERT: Do you still have that couch?

HARLAND: No, that's long gone now, that fell apart, that was old

HEBERT: Have you had, never had sex with your daughter

HARLAND: No

HEBERT: Have you had sex with any teenage girls

HARLAND: No

HEBERT: Or any young pre-teens

HARLAND: No

HEBERT: Any six year olds

HARLAND: Absolutely not, No

HEBERT: What would you say was the youngest girl you had sex with

HARLAND: Probably mid twenties

HEBERT: Mid-twenties?

HARLAND: Or actually no, first girl I had sex with was actually twenty

HEBERT: Twenty?

HARLAND: Yeah

HEBERT: And you were how old?

HARLAND: I was twenty-three

HEBERT: You were twenty three and she was twenty?

HARLAND: Yes

HEBERT: Have you ever had sex with anybody under the age of eighteen

HARLAND: No

HEBERT: Man or woman

HARLAND: No

HEBERT: Have you taken any other pictures other than the ones of your daughter that we were looking at tonight of anybody under the age of eighteen

HARLAND: No

HEBERT: Without their clothes on

HARLAND: No

HEBERT: Has anybody else taken any pictures of your daughter without her clothes on

HARLAND: No

HEBERT: Did anybody know about these pictures you were taking

HARLAND: No

HEBERT: Other than Paul and Lloyd

HARLAND: No

HEBERT: Paul and Lloyd know

HARLAND: That's correct

HEBERT: You sent them both pictures

HARLAND: That's correct

HEBERT: Do you have any idea who they might have sent them to

HARLAND: That I do not know

HEBERT: Do you remember Lloyd's screen name

HARLAND: It's been a long time since I've had contact with him.. maybe it was Lloyd

HEBERT: It was Lloyd

HARLAND: I think it was Lloyd something, yeah I think that was it

HEBERT: Do you know on what server he was on, was he on AOL or Adelphia or...

HARLAND: No, I don't

HEBERT: How did you, if you want to talk to him how did you contact him through what

HARLAND: It was ICQ

HEBERT: Through ICQ with Lloyd

HARLAND: Yes

HEBERT: The same with Paul

HARLAND: Yes

HEBERT: Also ICQ

HARLAND: Yes

HEBERT: Do you operate a website

HARLAND: No

HEBERT: Do either of those two

HARLAND: Uh, I think Lloyd had a website

HEBERT: Lloyd had a website

HARLAND: Yes

HEBERT: And what's depicted on his website

HARLAND: Just family photographs I believe

HEBERT: Family photographs with or without their clothes on

HARLAND: Oh, with

HEBERT: The first time you took a picture of your daughter without her clothes on, how old would you say she was

HARLAND: Probably four

HEBERT: Four

HARLAND: Uh Hum

HEBERT: And the picture that you took of your penis touching her vagina, how old was she then

HARLAND: She was probably five

HEBERT: Five

HARLAND: Yes

HEBERT: And you said you just stopped this fall

HARLAND: Yes

HEBERT: How long were the pictures going on and how long were you taking pictures

HARLAND: Probably only about a year, just about a year

HEBERT: Did you take pictures this past summer before she started kindergarten

HARLAND: I don't think I did, I don't think so

HEBERT: Why did you stop taking pictures

HARLAND: For one, I knew that I shouldn't be doing that and I just feeling guilty about it so...

HEBERT: But you knew it was illegal when you started it

HARLAND: Yes

HEBERT: But you still took pictures of her

HARLAND: Yes I did

HEBERT: And put them on the internet

HARLAND: I sent them yes

HEBERT: You sent them...some pictures of her without her clothes on

HARLAND: That's true

HEBERT: And the picture of your penis touching her vagina

HARLAND: Yes

HEBERT: Neither of you wearing clothes

HARLAND: Yes

HEBERT: How many pictures like that would you say you took

HARLAND: I can probably count (inaudible) very few

HEBERT: And how many would you say you took with just her naked

HARLAND: Maybe about forty or fifty maybe

HEBERT: Forty or fifty maybe

HARLAND: Yeah, I think so

HEBERT: Who developed them

HARLAND: They were off a digital

HEBERT: Oh, a digital camera

HARLAND: Yes

HEBERT: Okay, now there's some pictures that's she's in a very seductive type pose or a pose that you would see in a magazine, did you put her in these poses? Did you have her pose this way?

HARLAND: Some she... did herself, but uh, a couple of them I did, yes

HEBERT: A couple of them you had her pose

HARLAND: Yes

HEBERT: Like what kind of poses did you ask her to get in

HARLAND: Uh, this one where she was laying down with her legs wide, that I remember as being...

HEBERT: Without clothes or with clothes

HARLAND: Without

HEBERT: Without clothes

HARLAND: Yes

HEBERT: Any other ones that you remember her posing for

HARLAND: Not really because it was just natural exuberance

HEBERT: Now, when you were taking these pictures were they to put them on the internet or...

HARLAND: No, not really, it was just.. kind of an exciting thing, I didn't mean to do that, just went from there I guess

HEBERT: It was just an exciting thing

HARLAND: Yes

HEBERT: But you said Paul and Lloyd had sent you pictures of their family naked

HARLAND: Yes

HEBERT: Did you receive those pictures prior to you taking the pictures of your daughter

HARLAND: It's hard to say, I don't know...

HEBERT: You don't know.

HARLAND: No, I don't .. Say a definite

HEBERT: How many pictures, you said you took about forty to fifty pictures of her

HARLAND: Yes

HEBERT: Naked, how many pictures would you say you sent over the internet

HARLAND: Probably that many

HEBERT: Probably that many

HARLAND: Yes

HEBERT: All the pictures you took are out there on the internet

HARLAND: Yes

HEBERT: Is there prints of these pictures

HARLAND: No

HEBERT: Where are the disks, diskettes

HARLAND: Uh, back a while ago, I didn't keep anything on a diskette, it was all on the hard drive and I erased it all

HEBERT: Where is the hard drive now

HARLAND: You have it

HEBERT: Is it in the computer

HARLAND: Yes

HEBERT: What was that I think it was a Dell

HARLAND: Yes

HEBERT: And there was any other girls that you took pictures of

HARLAND: No

HEBERT: No neighborhood girls

HARLAND: No

HEBERT: Anything you can think of to add

HARLAND: No, I don't really think so

HEBERT: Okay, (inaudible) conclude at this time

HARLAND: Yes

HEBERT: 12:36 a.m. 12th day of March 2002, again I'm Detective Hebert, this is in reference to case number 02-042280.

END OF STATEMENT

EXHIBIT 11

Fletcher & Fogderude, Inc.

NORMAN L. FLETCHER
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January 5, 2006

VIA FACSIMILE: 559-498-7432

David Gappa
US Attorney's Office
1130 O Street
Fresno, CA 93721

Re: U.S.A. v. Boobar
Case No. CR F 02-5301 OWW
Sentencing Date: February 6, 2006

Dear Mr. Gappa:

Thank you for your letter of December 27, 2005. I have now amended my attached list of discovery provided to delete the reference to the four reports listed in your letter. I attach a copy of my revised list.

I also enclose a copy of the transcript my office prepared from the Harland audio tape.

In the event the government can not locate and produce the "Emmerson list", referred to in the U.S. Customs report FC07QL02BB0004, Report # 2, the defense will have to file a motion for discovery and/or sanctions and/or request an evidentiary hearing. The report in question is quite specific. It states that address indicia, of persons associated with child pornography, and a list of names and addresses was received by the U.S. Customs case agent on March 1, 2002, from Mr. Emmerson via his attorney and Emmerson offered to provide testimonial evidence against these individuals. The report then provides 11 individuals, none of whom is Mr. Boobar. Who was the reporting agent referred to in the report? I enclose a copy of that report..

Last, I am requesting a list of any agent government investigator or agent who

Fletcher & Fogderude, Inc.

ATTORNEYS AT LAW

Mr. Gappa

January 5, 2006

Page 2

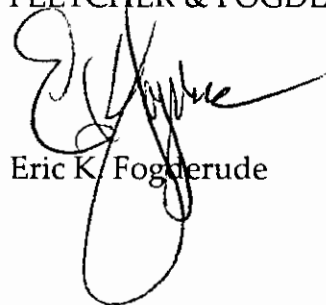
were present during the Harland and Emmerson interviews, in Fresno and Madera Counties, and a copy of any tape recordings made or any formal reports drafted of those interviews.

Last, from the recently provided discovery, it appears that Harland and Emmerson were both cooperating with the government and/or its agents since shortly after their arrests. Can you confirm the dates each began to cooperate?

Should you have any questions, please do not hesitate to call me.

Very truly yours,

FLETCHER & FOGDERUDE, INC.

A handwritten signature in black ink, appearing to read 'Eric K. Fogderude', written over the printed name.

Eric K. Fogderude

EKF/ms

Enclosures

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DEPARTMENT OF HOMELAND SECURITY ICE	1. PAGE 3
REPORT OF INVESTIGATION CONTINUATION	2. CASE NUMBER FC07QL02BB0004
	3. REPORT NUMBER: 002

DETAILS OF INVESTIGATION:

On March 1, 2002 the reporting agent received a list of addresses and telephone numbers from Ron Sawl, counsel for Lloyd EMMERSON. EMMERSON is currently in Federal custody pending trial on sexual exploitation of children and child pornography charges.

The reporting agent also received several pieces of address indicia, from which the information contained in the address list was derived. According to Mr. Sawl, Lloyd EMMERSON provided the aforementioned address indicia to him. Mr. Sawl said EMMERSON identified the individuals associated with the addresses as "producers" of child pornography. Mr. Sawl also said EMMERSON is able to provide testimonial evidence against the individuals associated with the addresses.

The telephone numbers and addresses on the list are:

A.

According to information supplied by U.S. Customs, Spokane, WA. The box holder for this address is:

Attempts to further identify this individual are underway.

B.

Area code and prefix information indicates that these telephone numbers are assigned to subscribers in West Palm Beach and Boynton Beach, FL, respectively. Based on the physical appearance of the indicia from which these numbers were taken, and on the geographical locations covered by the area codes and prefixes, the reporting agent believes these numbers are associated with David Michael HARLAND, who is more fully described in Item C that follows.

C.

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DEPARTMENT OF HOMELAND SECURITY ICE REPORT OF INVESTIGATION CONTINUATION	1. PAGE 4
	2. CASE NUMBER FC07QL02BB0004
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According to information supplied by the Florida Department of Highway Safety and Motor vehicles, this address is actually in West Palm Beach. The Florida Department of Highway Safety and Motor vehicles has also identified this as the address for:

[REDACTED]

A Florida Drivers License photograph of [REDACTED] appears to be of the same person who is depicted molesting a child in photographs recovered from EMMERSON's computer.

This matter has been discussed with SS/A Jack Watkins of RAIC/Palm Beach. Additional information regarding this matter will be forwarded to RAIC/Palm Beach for whatever action is deemed appropriate.

D. [REDACTED]

This subject is also known as [REDACTED]. Information supplied by the Danish National Police has identified this subject as a possessor and distributor of child pornography with a "lot of contacts around the world."

E. [REDACTED]

This is a business belonging to [REDACTED], who has been arrested on child pornography charges in Idaho. This arrest was based on information recovered from EMMERSON's computer and supplied to the Cassia County (Idaho) Sheriff's office by Clovis PD.

F. [REDACTED]

See Item C above - city is actually Del Rey Beach, FL

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DEPARTMENT OF HOMELAND SECURITY ICE R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	1. PAGE 5
	2. CASE NUMBER FC07QL02BB0004
	3. REPORT NUMBER: 002

G.

Information recovered from EMMERSON's computer indicates this subject is also involved in possession/distribution of child pornography. Attempts to more fully identify this subject are underway.

H.

This is believed to be the same person as a subject identified by the Danish national Police as [REDACTED] is also the subject of a current RAIC/Jacksonville child pornography investigation. According to the Danish National Police, this subject is "into wrestling with little girls."

I.

This is believed to be the same person as a subject identified by the Danish national Police as [REDACTED] Switzerland. According to the Danish National Police, this subject is a child molester/producer and/or distributor. This subject was arrested on January 28, 2002.

J.

According to SS/A Ralph Pendleton of RAIC/Dallas, [REDACTED] is an alias used by [REDACTED] a.k.a. Sitting Bull, a.k.a. Bullwinkle, who was arrested on child molestation charges on February 24, 2002.

K.

O F F I C I A L U S E O N L Y

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